SUPREME COURT OF THE UNITED STATES.

No. ~~207~~. 121.

JAMES H. WOODWORTH, CLAIMANT AND LIBELLANT OF THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS, HER TACKLE, &c., APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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No. 207.

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a Pleas in the circuit court of the United States of America within and for the northern district of Illinois, held in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding judge, and the Hon. Thomas Drummond, district judge of said district and associate judge of said circuit court, on Friday, the twenty-ninth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

b Be it remembered, that on the second day of July, in the year of our Lord one thousand eight hundred and sixty-four, came said libellant, James H. Woodworth, by Messrs. Bates & Towslee, his proctors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his transcript of a record from the district court of the United States for the northern district of Illinois, in admiralty; which said transcript is in the words and figures following, to wit:

1 Pleas in the district court of the United States of America for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of said court, on Thursday, the twenty-first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

WM. H. BRADLEY, *Clerk.*

JAMES H. WOODWORTH
vs.
PROCEEDS OF SCHOONER HARRIET ROSS. } Libel.—Gen. No. 1,721.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

Be it remembered, that on the first day of April, in the year of our Lord one thousand eight hundred and sixty-three, James H. Woodworth,
2 libellant, by Messrs. Bates & Towslee, his proctors, came into the office of the clerk of the district court of the United States of America for the northern district of Illinois, at Chicago, in said district, and filed his libel against the proceeds of the schooner Harriet Ross, respondent, also at the same time filed his stipulation for costs in said entitled cause; which said stipulation and libel are in the words and figures following, to wit:

Lib'lant's stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, April term, A. D. 1861.

Whereas a libel was filed in this court on the first day of April, A. D. 1863, by James H. Woodworth against the proceeds and remnants of the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be paid over to the libelant to answer the prayer of the libelant; and the said libelant and William H. Wait, surety, the parties hereto

hereby consenting and agreeing that in case of default or contumacy
3 on the part of the libelant or his surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars: Now, therefore, it is hereby sipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the libelant above named shall pay all such costs as shall be awarded against by this court, or in case of appeal by the appellate court.

J. H. WOODWORTH.
WM. H. WAITE.

Taken and acknowledged this day of April, A. D. 1863, before me.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

William H. Waite, party to the above stipulation, being duly sworn, depose and says that he reside in the northern district of Illinois, and that he is worth the sum of five hundred dollars over and above all his debts.

WM. H. WAITE.

Sworn this first day of April, A. D. 1863, before me.

SETH M. DUNNING,
U. S. Commissioner for Nor. Dist. of Ills.

4 Endorsed: Filed April 1st, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

Libel.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the Honorable Thomas Drummond, judge of the district court for the northern district of Illinois, in admiralty:

The libel and complaint of James H. Woodworth against the proceeds, now in the registry of this honorable court, arising from the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That at the time the cause of action hereinafter mentioned arose, the schooner Harriet Ross was a vessel of over twenty tons burthen, and engaged in commerce and trade on the lakes and the navigable waters connecting the same, and was duly enrolled and licensed according to the act of Congress in such cases made and provided.

Second. That the schooner Flora Watson, which was a vessel of over twenty tons burthen, and engaged in commerce and trade on the
5 lakes and navigable waters connecting the same, duly enrolled and licensed according to the laws of the United States, on the morning of the second of November, 1862, was navigating the waters of Lake Ontario with a cargo of about fourteen thousand three hundred and forty bushels of wheat, with, as this libelant is informed and alleges, a good and sufficient lookout properly stationed and engaged in the business of lookout, with a good and bright light properly placed forward so as to be seen by passing vessels, with a good and competent man in charge of her, the wind being southwest and a good sailing breeze, the schooner steering east-northeast, about three miles off Niagara light and about twelve miles from Canada, was run foul of by the schooner Harriet Ross, striking said schooner Flora Watson on the starboard side, and so breaking her that within fifteen minutes or thereabouts said schooner sunk, together with her said cargo, and thereby said schooner and her cargo of wheat were a total loss. And this

libelant was damaged to the amount of five thousand one hundred
6 and seventy-five dollars and ninety-two cents, together with interest, from said loss in the manner as hereafter alleged.

Third. That said schooner Harriet Ross was unskillfully managed and navigated, and that she had no proper lookout or light, and that the collision was caused solely by the want of care and skill on the part of the crew of the Harriet Ross, and not from any want of care of those having charge of the schooner Flora Watson.

Fourth. That the Toledo Mutual Insurance Company, a corporation organized under and created by the laws of the State of Ohio, and whose home office was at Toledo, in said State of Ohio, on or about the last of the month of October, 1862, (the day of the month your libelant cannot set forth,) became and was the insurer of said cargo of wheat of the said schooner Flora Watson, against the dangers of navigation, in the sum of fifteen thousand dollars or thereabouts, to the owners and shippers of the said cargo of wheat on said schooner Flora Watson, from the port of Toledo, Ohio, to the port of
7 Oswego, in the State of New York; that the said insurance of the said Toledo Mutual Insurance Company was still continuing and in force at the time of the collision between said schooner Harriet Ross and the Flora Watson, mentioned in the second article of this bill. And your libelant alleges, on information and belief, that the said Toledo Mutual Insurance Company, soon after said collision, before set forth in article two, upon due proof of said loss, paid to the parties for whom they became such insurers the sum of fifteen thousand dollars or thereabout.

Fifth. That on the day or soon thereafter, but before the time of the collision mentioned in article two, that the said Toledo Mutual Insurance Company became the insurer of said cargo of wheat in the said schooner Flora Watson, the Columbian Insurance Company of New York, a corporation duly created and organized under and by virtue of the laws of the State of New York, at the request of said the Toledo Mutual Insurance Company or the Corn Exchange Fire and Inland Navigation Insurance Company,
8 became and was reinsurer of the said cargo of wheat, on the said schooner Flora Watson at the time of said collision and loss of said cargo, to the amount of three thousand dollars to the Toledo Mutual Insurance Company or to the Corn Exchange Fire and Inland Navigation Insurance Company; that such reinsurance of said wheat was against loss or damage by the dangers of navigation to said cargo of wheat from the port of Toledo to the port of Oswego, in the State of New York; that before the first of January, 1863, the said Columbian Insurance Company paid the sum of three thousand dollars to the said Toledo Mutual Insurance Company or to the said Corn Exchange Fire and Inland Navigation Insurance Company on account of the loss of said cargo of wheat by said collision, as before alleged.

Sixth. That the said schooner Harriet Ross at the time of said collision was on a voyage from the port of Oswego, in the State of New York,
9 to the port of Chicago, in the State of Illinois, loaded with a cargo of salt; that as this libellant is informed and alleges, at the time of the sailing of said schooner Harriet Ross from the port of Oswego on her said voyage, one Reynolds, Ely & Co., of Chicago, in the State of Illinois, were the owners of said cargo of salt on board the schooner Harriet Ross, and continued to be and were the owners of such salt at the time of said collision on the 2nd day of November, 1862; that at or about the last day of October, or thereabouts, of the year 1862, as your libelant is informed and alleges, the said Columbian Insurance Company became and was an insurer of said cargo of salt, on board of said schooner Harriet Ross, to Reynolds, Ely & Co., against loss or damage to said cargo of salt

from the dangers of navigation, to the sum of five thousand dollars or thereabouts, and that said Columbian Insurance Company was such insurer of said salt at the time of said collision.

Seventh. That said cargo of salt by the said collision, as mentioned in article two, was damaged to the amount of fifteen hundred dollars and seventy-five cents; that such collision and loss and damage to said cargo of salt
10 on board of said schooner Harriet Ross was, as this libelant is informed and alleges, caused from the careless and improper manner the said schooner Harriet Ross was managed and navigated, and for the want of care and skill in the navigation of said schooner before and at the time of said collision; that about the last of November, 1862, the Columbian Insurance Company paid to Reynolds, Ely & Co. the sum of fifteen hundred dollars and ninety-seven cents, the loss and damage upon said cargo of salt growing out of and caused by said collision, as they were legally bound by their policy of insurance upon said cargo of salt to said Reynolds, Ely & Co. to do; that the said Columbian Insurance Company had a policy of insurance upon the said schooner Harriet Ross at the time of said collision in the sum of seven thousand dollars, given to the owners of said schooner Harriet Ross; that in the said collision the said schooner Harriet Ross was greatly damaged and injured, and that said Columbian Insurance Company paid for and towards the repairs of said schooner the sum of six hundred seventy-four dollars and ninety-five cents.

11 Eighth. That the said Columbian Insurance Company, on the twenty-sixth day of February, 1863, assigned and sold to one John C. Nyman, all their claim and demand for the said monies paid by them for and on account of the loss of the said cargo of wheat on the said schooner Flora Watson, and the loss and damage to said cargo of salt on said schooner Harriet Ross, and for the amount paid for and towards the repairs of the Harriet Ross, and all their claim and demand to the surplus monies arising from the sale of the said schooner Harriet Ross, now in the registry of this court, and the said John C. Nyman on or about the 26th day of March, 1863, sold and assigned to this libelant the said claim and demand, assigned and sold to him, said John C. Nyman, above mentioned in this article.

Ninth. That a right and claim to said surplus monies from the sale of the schooner Harriet Ross, now in the registry of this court, hath accrued to this libelant to the amount of the monies and interests paid by said Columbian Insurance Company for and on account of the loss of said cargo of
12 wheat on said schooner Flora Watson, and the loss and damage to said cargo of salt on said schooner Harriet Ross.

Therefore this libelant prays that out of the proceeds of the said sale of the schooner Harriet Ross, now in the registry of this court, that this court order the amount of monies and interest due thereon, paid by said Columbian Insurance Company for the loss of said cargo wheat and the loss and damage to said cargo of salt, and also for the money paid for the repairs of the schooner Harriet Ross to this libelant, together with the costs of the libelant in this suit, and that such other and further order may be made in the case as may be just and equitable.

J. H. WOODWORTH.

Subscribed and sworn before me this first day of April, 1863.

SETH M. DUNNING,
U. S. Commissioner, Nor. Dist. Ill.

Bates & Towslee, proctor for libelant; Geo. C. Bates, of counsel.

Endorsed: Filed April 1st, 1863.

WM. H. BRADLEY, *Clerk.*

13 On this, to wit, the 2nd day of February, A. D. 1864, came said libellant, by his proctors, and filed in said clerk's office his amendment to his libel in said entitled cause; which said amendment is in the words and figures following, to wit:

Amendment to libel.

District court of the United States for the northern district of Illinois.

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF HARRIET ROSS

The libelant, on leave of the court first had and obtained, amends the libel in this cause so as to strike out in said libel, wherever it occurs, "the Toledo Mutual Insurance Company, a corporation created and organized under the laws of Ohio," and insert in their place the words "the Corn Exchange Insurance Company, a corporation organized under, and created by, the laws of New York."

BATES & TOWSLEE, *Proctors for Libelants.*

Endorsed: Filed Feb'y 2nd, 1864.

WM. H. BRADLEY, *Clerk.*

14 On this day, to wit, the 9th day of February, A. D. 1864, the Corn Exchange Fire and Navigation Insurance Company, respondents, by R. Rae, proctor, came and filed in the clerk's office their answer and stipulation in said entitled cause, which said answer and stipulation are in the words and figures following, to wit:

Answer.

To the Honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois, in admiralty:

The answer of the Corn Exchange Fire Navigation Insurance Company, a corporation created and existing by virtue of the laws of the State of New York, to the amended libel of James H. Woodworth, against the proceeds of the sale of the schooner Harriet Ross, &c., in a cause of collision, &c., alleges as follows:

First. That respondents admit the truth of the first article of said libel.

Second. That respondent admits the matters alleged in article second of said libel, except so far as libelant alleges he has sustained damages by reason of said collision; and respondent denies that libelant did suffer any
15 damages by reason of said collision in any manner whatever.

Third. That respondents admits the truth of the matters alleged in article third of libelant's libel.

Fourth. That respondent admits so much of said article 4th of said libel as alleges that respondent was the insurer on the cargo of the schooner Flora Watson in the sum of three thousand dollars, and that upon proof of said loss respondents paid the same; and respondents call for proof on any other allegations made in said 4th article of said libel.

Fifth. That the matters alleged in article 5th of libelant's libel are true.

Sixth. That respondent has no knowledge of the matters alleged in article 6th of said libel, and neither admits nor denies the same, but demands that proof be made thereof.

Seventh. That respondent admits so much of article 7th of said libel as alleges that whatever loss there was was thro' the fault of the officers and crew of the schooner Harriet Ross, and not through any fault of those

16 in charge of the Flora Watson; and as to all other matters alleged in said article respondent has no knowledge, and neither admits nor denies the same, but demands strict proof to be made thereof.

Eighth. That respondent admits that the Columbian Insurance Company sold whatever interest they had in said matter to John C. Nyman, who requested the said company to sell the same to him, and that said sale was made after respondent had attached the proceeds of the sale of the Ross in this honorable court.

That said Nyman made said purchase at the request of Charles Bradley, the ostensible agent of Nathan B. Bradley, pretended and nominal owner of the schooner Harriet Ross at the time when said collision occurred, but in truth and in fact the said Charles Bradley was the real owner of said vessel both at the time of said loss and before and after the sale made of said Ross by this honorable court.

That said Nyman held the same in trust for the benefit of the owner of said schooner Harriet Ross at the time of the collision, and that said
17 Bradley requested the libelant in this case to procure an assignment to him, said libelant, said purchased claim.

That at the time of said collision said libelant was the mortgagee or the pretended mortgagee of said schooner Harriet Ross, and that said mortgagee, conspiring with the said Bradley to cut out and destroy respondent's lien upon said Ross for the damages which respondent had suffered by reason of said collision, procured the said schooner Harriet Ross to be libeled for a trivial amount and sold, and the said Bradley made affidavit, to obtain possession of the proceeds of sale, that he knew of no other claim or demand against said schooner other than the one libeling, and thus sought to withdraw the proceeds from this honorable court; all which proceedings had will more fully appear by reference had to the original proceedings in this case.

That the filing this libel is a part and parcel of said attempt to escape payment of respondent's damages, and to deprive said respondent of the benefit of the decree made in this court, and that libelant is not entitled to
18 participate in the proceeds of the schooner in common with respondent, by whose diligence and at whose risk and expense the damage has been pronounced for.

Wherefore, respondent prays said libel be dismissed with costs.

O. B. SANSUM,
Agent for the Corn Exchange Ins. Co. of New York.

Sworn this eighth day of February, A. D. 1864, before me.

R. RAE, *U. S Com'r.*

Endorsed: Filed Feb'y 9th, 1864.

WM. H. BRADLEY, *Clerk.*

Claimant's stipulation.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

District court, term, A. D. 18 .

Whereas a libel was filed in this court on the day of , A. D. 18 , by James H. Woodworth against the proceeds of the sale of the sch'r Harriet Ross, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and whereas a claim has been filed in the said cause by James H. Woodworth and the said Corn Exchange Insurance Com-
19 pany and R. Rae, its surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or its surety execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

O. B. SANSUM,
Agent for the Corn Exchange Ins. Co. of New York.
R. RAE.

Taken and acknowledged this eighth day of February, A.D. 1864, before me.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

20 R. Rae, party to the above stipulation, being duly sworn, depose and say that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

R. RAE.

Sworn this eighth day of February, A. D. 1864, before me.
WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Feb'y 9th, A. D. 1864.
WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 12th day of February, A. D. 1864, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

Record entry.

JAMES H. WOODWORTH
vs.
PROCEEDS SCHOONER HARRIET ROSS. } Libel.

Now comes the respondent, by its proctor, and on motion leave is given to amend the answer.

21 On the same day, to wit, the 12th day of February, A. D. 1864, came said respondent, by R. Rae, esq., its proctor, and filed in said clerk's office an amendment to answer in said entitled cause; which said amendment is in the words and figures following, to wit:

Amendment to answer.

District court of the United States for the northern district of Illinois.

JAMES H. WOODWORTH
v.
PROCEEDS OF SCH'R HARRIET ROSS.

The respondent, on leave of the court just had and obtained, amends the answer in this cause so as to strike out in said answer article eighth, and insert, in place of the matters therein set forth, the words following: That respondent denies the matter set forth in said eighth article of said libel, and demands strict proof to be made thereof.

R. RAE, *Proctor for Respondent.*

Endorsed: Filed Feb. 12th, 1864.
WM. H. BRADLEY, *Clerk.*

22 *Libelant's testimony.*

Deposition of George M. Cone, a witness on behalf of libelant, taken before Kenneth G. White, a commissioner, at New York City, on the twenty-second day of February, A. D. 1864.

And the said George M. Cone, being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said George M. Cone, and he did thereupon depose, testify, and say as follows, viz:

I reside in the city of New York; I am the adjuster of losses for the Columbian Insurance, of the city of New York; I know that the Columbian Insurance Company reinsured the Corn Exchange Insurance Company, as appears by certificate of insurance issued to that company on the 30th of October, 1862, in the sum of three thousand dollars ($3,000) on wheat, per schooner Flora Watson, from Toledo to Oswego, loss payable to
23 their order, and a total loss for same amount, $3,000, was paid to them on the 3d of January, 1863, as appears by the records of the said Columbian Insurance Company. The certificate of insurance above referred to by me I now produce and make part of this deposition, and the same is marked "Exhibit A," K. G. W., U. S. com'r. The said certificate now belongs to the Columbian Insurance Company, said company having paid the loss on the same.

GEO. M. CONE.

Subscribed and sworn to before me this 22nd day of February, 1864.
KENNETH G. WHITE, *U. S. Commissioner.*

EXHIBIT A, K. G. W., U. S. com'r.

$3,000. The Columbian Insurance Company, of New York. No. 29.

This certifies that Corn Ex. Ins. Co. insured under and subject to the conditions of policy No. 523, issued by the Columbian Insurance Company, of New York, at the Buffalo, N. Y., agency in the sum of three thousand
24 dollars on wheat in board cargo of the schooner Flora Watson, and from Toledo to Oswego, at the rate of per cent. Loss, (if any,) payable to their order or order hereon, and return of this certificate, $3,000, at per cent. is $, which premium is hereby acknowledged to have been received.

Countersigned at Buffalo, N. Y., this 30th day of October, 1862.
ROUNDS & HALL, *Agent.*

Endorsed:

Please pay Carlos Colton, esq., sec'y of the Mutual Insurance Company of Toledo, or order.

Buffalo, Nov. 24th, 1862. JOHN N. GARDNER, *General Agent.*

Pay without recourse to the Toledo Fire and Marine Insurance Company (A. B. Brownlee, sec'y,) to whom the above transfer should have been made by Mr. Gardner.

Toledo, Nov. 25th, 1862.
CARLOS COLTON, *Sec'y Toledo Mutual Ins. Co.*

This certificate is hereby returned to the Corn Exchange Insurance Company, they having paid in this loss under certificate No. 20, issued by
25 A. W. Colton, ag't, dated October 30th, 1862.

Buffalo, Dec. 10th, 1862.

A. B. BROWNLEE, *Sec'y,*
Per A. W. COLE.

Deposition of William H. Windsor, a witness on behalf of libelant, taken before Kenneth G. White, esq., commissioner, in New York City, on the twenty-third day of February, A. D. 1864.

And the said William H. Windsor, being about the age of forty years, and having been by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William H. Windsor, and he did thereupon depose, testify, and say as follows, viz :

I reside in the city of New York, and am secretary of the Corn Exchange Insurance Company, of the city of New York. The Corn Exchange Insurance Company had a policy of insurance on the cargo, and hull, and
26 freight list of the schooner Flora Watson at the time she was lost. The amount of the policy on the hull was $3,000 ; on the freight list, $2,000 ; and on the cargo $3,000. The Corn Exchange Insurance Company reinsured the last amount of $3,000 on the cargo in the Columbian Insurance Company, of New York City. The Columbian Insurance Company paid this loss of $3,000 to the Corn Exchange Insurance Company. I have no doubt that the certificate now shown me, marked "Exhibit A, K. G. W., U. S. Com'r," is the certificate of the reinsurance referred to. I cannot state the exact time of the payment of the $3,000 by the Columbian Insurance Company to the Corn Exchange Insurance Company, without referring to the books.

W. H. WINDSOR.

Subscribed and sworn to before me this 23d day of February, 1864.
KENNETH G. WHITE, *U. S. Commissioner.*

27 Deposition of L. C. Hall, taken in behalf of libelant, taken before Henry W. Bishop, jr., a special commissioner, on the 20th day of April, A. D. 1864.

United States district court, northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
PROCEEDS OF SCHOONER HARRIET ROSS.

Testimony of L. C. Hall, taken before me, a special commissioner appointed to take testimony in said case, on this 20th day of April, A. D. 1864.

My name is L. C. Hall. I reside in the city of Chicago, and am engaged in the business of insurance. I was in 1862 an agent of the Columbian Marine Insurance Company, of New York. The Columbian Insurance Company is the chartered name. I did know the schooner Harriet Ross, and have heard of the Flora Watson. The Columbian Insurance Company had a risk on the cargo of salt belonging to Reynolds, Ely & Co., on the
28 schooner Harriet Ross at the time of her collision with the Flora Watson, in November, 1862. On December 30, 1862. We drew in December, 1862, for two thousand and ninety-one dollars, as the amount of the loss occasioned by said collision. The Columbian Insurance Company at the time of said collision had a risk upon the hull of the Harriet Ross. I do not recollect the amount of the risk. January 13, 1863, we drew for $674 95, being the general average on the loss last named. The risks in both cases exceeded the amounts paid. The drafts drawn in said cases were both paid by the said company. The policy on hull was for $7, 000 03-100, and on the salt two thousand and ninety dollars.

I know Joseph Morrison. He was general manager of the western branch of the office. I have always treated him as such. All of our business was done through him. I have examined the paper marked Exhibit A, and hereto attached as an Exhibit A. The signature to said paper of Joseph Morrison, director, &c., is genuine, and the assignment of the same to the libel-
29 ant is genuine. The last I knew of Mr. Morrison he was at Boston. Mr. Morrison had power and authority to make such sale and assignment. The salt I have spoken of was abandoned to the company, and we sold it for five hundred and ninety dollars and three cents, the net proceeds of said sale. We had received letters from the home office to take our instructions from Mr. Morrison. We did not look to any one else. He did all that the home office could do, and his acts were always recognized by them. We did not look to any one else for instructions but him. He had all the power of the home office. I suppose that the parties for whom the policies were issued had an insurable interest to the extent of said policies.

L. C. HALL.

Subscribed and sworn to before me, H. W. Bishop, jr., this twen-
30 tieth day of April, A. D. 1864. All of which is respectfully submitted.

HENRY W. BISHOP, JR.,
A Special Commissioner to take testimony in the said case.

EXHIBIT A, H. W. Bishop, jr., special com'r.

We, the Columbian Insurance Company, of New York, for a valuable consideration received, do hereby assign and sell to John C. Nyman all our right and claim to any share of the surplus of the proceeds of the sale of the schooner Harriet Ross, which surplus is now in the registry of the court, in the northern district of Illinois. And we authorize said Nyman to prosecute on said claim against such surplus, but whatever proceedings are had to be at the cost and expense of said John C. Nyman.

Chicago, 26 February, 1863.

JOSEPH MORRISON, *Director, &c.*

Endorsed: For a valuable consideration received, I hereby assign and sell to James H. Woodworth, all my interest and claim in and to the
31 within demand, and authorize said Woodworth to prosecute the same in any way he may deem advisable at his own risk and cost.

Chicago, 26 March, 1863.

J. C. NYMAN.

Endorsed: Filed June 15th, 1864.

WM. H. BRADLEY, *Clerk.*

United States district court, northern district of Illinois, in admiralty.

Depositions of J. C. Nyman and Charles Bradley, taken on behalf of libelant, before Henry W. Bishop, jr., special commissioner, on the 15th day of June, A. D. 1864.

Cross-examination of J. C. Nyman, taken in the above-entitled cause, on the fifteenth day of June, A. D. 1864, before me, H. W. Bishop, jr., a special commissioner in said case.

Messrs. Bates & Towslee appearing for the libelant, and R. Rae, esq., for the respondent.

J. C. Nyman having been by me first duly cautioned and sworn, de-
32 pose and says:

I have been examined in this case upon the part of the respondent, before Mr. Reily, commissioner. The assignment shown me from the Columbian Insurance Company was made by Mr. Morrison, and the signature

is his, but when and where it was made I don't now remember. I have no recollection of being present when the assignment was made. There was a good deal of talk back and forth in regard to it, and Charles Bradley said that he wanted the assignment made to me. I told him I had no objection to it. The assignment was made after that; some days after that the assignment was shown to me. I don't know of any consideration being paid. I distinctly remember that all of the insurance business of Charles Bradley was to be given to the Columbian Insurance Company, in consideration of the assignment of this claim against the proceeds of the schooner Harriet Ross. That is my signature to the assignment of the claim
33 to J. H. Woodworth. At the time of the direct examination I was positive I had not made the assignment. I want to state further that I must have been in error when I stated in my former deposition that I had not signed it. Mr. Bradley has given me from six to eight thousand dollars in the last year to the Columbian Ins. Co. in premiums, and I think a little over since that fall. I have no interest in the claim assigned now, and so far as I know, Mr. Woodworth has all the claim on it. I judge from the assignment.

Re-examination by Mr. Rae.

Inty. 1st. Are you quite sure that there was an agreement between yourself and Mr. Morrison, that you should take an assignment of the claim of the Columbian Ins. Co., or the proceeds of the sale of schooner Harriet Ross, and hold the same in trust for the benefit of James H. Woodworth or
34 Charles Bradley, or both of them?

Ans. There was no agreement with Mr. Morrison and myself in regard to it.

Int. 2nd. Was there any agreement made with you and J. H. Woodworth?

Ans. I never exchanged a word with Mr. Woodworth on the subject.

Int. 3rd. Was there any agreement between you and Charles Bradley?

Ans. Charles Bradley asked me if I would take the assignment of it and hold it to be used as circumstances might require afterwards. I took it without any understanding from him. I intended to hold it until I got pay for what Bradley was owing me, and then to turn it over to him or anybody else.

Int. 4th. Had he paid you on the 26th of March, 1863, all he owed you? (Objected to.)

Ans. He paid me all he owed me.

Int. 5th. Do you remember ever reading or seeing, until very re-
35 cently, the assignment written above your name?

Ans. The first I recollect ever reading or seeing it is since giving my first evidence in this case, although I would not say positively that it was not there at the time I signed it, but my impression was that it was not there, though my mind is confused in regard to it.

Int. 6th. Have you ever received any consideration for your assignment? If so, when? (Objected to.)

Ans. The idea was that I should hold that until Bradley paid me what he owed me. There was no other consideration, unless that can be considered a consideration.

Int. 7. Does the insurance done by Charles Bradley with you include the schooner Harriet Ross?

Ans. Bradley ordered the insurance of the Harriet Ross, with other vessels, for himself, Woodworth, and his brother.

Int. 8. Where were you on the 19th of April, or 20th, 1864?

Ans. I was in Chicago.

36 Int. 9. In whose office?

Ans. In my own office, 160 So. Water street.

Int. 10. Had you been away from town previous to that?

Ans. I had been at Milwaukee.

J. C. NYMAN.

Subscribed and sworn to before me this 15th day of June, A. D. 1864.

All of which is respectfully submitted.

H. W. BISHOP, JR., *Special Commissioner.*

United States district court, northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
PROCEEDS OF SALE OF SCHOONER HARRIET ROSS.

Examination of Charles Bradley, taken before me in this case by consent.

Mr. Bates appeared for libelant and Mr. Rae for respondent.

37 Examination of Charles Bradley, a witness produced by the libellant in said case.

(The examination of Charles Bradley objected to, on the ground of interest, by Mr. Rae.)

Int. 1. Will you state whether the assignment by J. C. Nyman of the claim of the assignment made by the Columbian Insurance Company to him, was written on the back of said assignment prior to or subsequent to Mr. Nyman putting his name to such assignment to Mr. Woodworth?

Ans. The assignment to Mr. Woodworth was made before Mr. Nyman signed it. I saw them both put on.

C. BRADLEY.

Subscribed and sworn to before me the 15th day of June, A. D. 1864.

H. W. BISHOP, JR., *Special Com'r.*

Endorsed: Filed June 15th, 1864.

WM. H. BRADLEY, *Clerk.*

38 *Respondent's testimony.*

Deposition of John C. Nyman, taken before John C. Reily, a notary public, Chicago, Illinois, on the 12th day of February, A. D. 1864, on behalf of respondent.

John C. Nyman, a witness, of lawful age, being by me first duly cautioned and sworn, on his oath deposeth and says:

My name is John C. Nyman. I reside in Chicago, and am insurance agent and vessel broker. The Columbian Insurance Company have their agency in my office, and I work for them under a salary. I did not, on the twenty-sixth day of February, A. D. 1863, buy of the Columbian Insurance Company all their claim and demand for moneys paid by them for and on account of the loss of the cargo of wheat on the schooner Flora Watson and the loss and damages to said cargo of salt on the schooner Harriet Ross, and for the amount paid for and towards the repair of the Harriet Ross, and all

39 their claim and demand of the surplus moneys arising from the sale of the schooner Harriet Ross, now in the registry of the district court of the United States for the northern district of Illinois; but the Columbian Insurance Company did give me their claims for moneys paid on the loss of the cargo of wheat on the Flora Watson. I did not, on the twenty-fifth day

of March, A. D. 1863, sell my interest to any one, and no one has paid me anything for it, nor have I given it to any one. I am not the agent of Mr. Bradley, but when he is away he generally leaves his vessels with me to charter. When the Harriet Ross was sold, on Purrington & Scranton's claim, Mr. Bradley came to me and got my check for about eighteen hundred dollars, stating that he wanted to make up the amount which the Harriet Ross sold for to pay into court. He returned in a few days the same check unused.

J. C. NYMAN.

Subscribed and sworn before me this 12th day of February, A. D. 1864.
[SEAL] JOHN C. REILY, *Notary Public.*

40 *Record entry.*

On this day, to wit, the 16th day of June, in the adjourned May term, A D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JAMES H. WOODWORTH
vs.
PROCEEDS OF SCH'R HARRIET ROSS. } Libel.

Now come the parties, by their respective proctors, and by agreement this cause is set down for hearing on the pleadings and proofs filed. And after hearing the same, together with the arguments of the advocates of the respective parties, the court not being now sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 21st day of June, in said May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

41 JAMES H. WOODWORTH
vs.
PROCEEDS OF SCHOONER HARRIET ROSS. } Libel.

The court having considered and being now sufficiently advised upon the matters heretofore submitted in this case, pronounces against the libelant, and dismisses the libel. It is thereupon considered and adjudged by the court that the libel be dismissed at the costs of the libelant, and that the claimant have and recover of the libelant his costs and charges by him about his defense in this behalf expended, to be taxed, and that execution issue therefor.

Prayer for appeal.

On this day, to wit, the 24th day of June, A. D. 1864, came said libelant, by his proctors, and filed in said clerk's office his prayer for an appeal in the said entitled cause, which is in the words and figures following, to wit:

District court of the United States for the northern district of Illinois, in admiralty.

42 JAMES H. WOODWORTH
vs.
THE PROCEEDS OF SALE OF THE SCHOONER HARRIET ROSS. }

The above-named libelant, conceiving himself aggrieved by the final decree entered on the twenty-first day of June, 1864, in the above-entitled

cause, doth hereby appeal therefrom to the next circuit court of the United States for the northern district of Illinois, to be held in and for the said district. And he hereby prays that this his appeal may be allowed and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said circuit court.

Chicago, June 21st, 1864.

BATES & TOWSLEE, *Proctors for Libellant.*

Endorsed: Filed June 24th, 1864.

WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the 24th day of June, A. D. 1864, came said libelant, by his proctor, and filed in said clerk's office his notice of
43 appeal; which said notice is in the words and figures following, to wit:

Notice of appeal.

District court of United States for northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF SALE OF THE SCHOONER HARRIET ROSS.

To R. Rae, esq., proctor of respondent:

SIR: You will please take notice that we have this day taken an appeal from the decree made this day of the district court of the United States for northern district of Illinois, in the above-entitled cause, dismissing the libel in said cause, to the next circuit court of the United States for the northern district of Illinois.

Chicago, June 21st, '64.

Very resp'ly,

BATES & TOWSLEE, *Proctors for Libelant.*

I accept service of a copy of within notice of appeal this 21st June, 1864.

R. RAE.

Endorsed: Filed June 24th, 1864.

WM. H. BRADLEY, *Clerk.*

44 On this day, to wit, the 24th day of June, A. D. 1864, came said libelant, by his proctor, and filed in said clerk's office his appeal bond in said entitled cause; which said bond is in the words and figures following, to wit:

Appeal bond.

District court of the United States for the northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF SALE OF SCHOONER HARRIET ROSS.

Whereas an appeal has been taken from the decree of the court, made on the twenty-first day of June, 1864, in a certain cause wherein James H. Woodworth is libelant against the proceeds of the sale of the schooner Harriet Ross:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of two hundred and fifty dollars to pay all damages and costs which shall

be awarded against the said appellant by the final decree rendered by the appellate court.

J. H. WOODWORTH.
WM. K. McALLISTER.

45 Taken and acknowledged this 22nd day of June, 1864, before me.
[SEAL.] OBADIAH JACKSON, JR., *Notary Public.*

NORTHERN DISTRICT OF ILLINOIS:

Wm. K. McAllister, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. K. McALLISTER.

Subscribed and sworn to this 22nd day of June, A. D. 1864.
[SEAL.] OBADIAH JACKSON, JR., *Notary Public.*

Approved.

THOMAS DRUMMOND.

Endorsed: Filed June 24th, 1864.

WM. H. BRADLEY, *Clerk.*

46 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, William H. Bradley, clerk of the district court of the United States for said northern district of Illinois, hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein James H. Woodworth is libelant, and the proceeds of sale of schooner Harriet Ross respondent, made up under the fifty-third rule in admiralty, as the same appears of record in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, at my office, in Chicago, in said district, this twenty-eighth day of June, A. D. eighteen hundred and sixty-four, and of our independence the eighty-eighth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Filed July 2d, 1864.

WM. H. BRADLEY, *Clerk.*

47 On the hearing of this cause in the circuit court the respondent, by Mr. Rae, his proctor, offered in evidence, subject to objection on the part of the libellant's proctor, the following affidavits of James H. Woodworth and Charles Bradley, which were filed in the district court for this district, in the case of George E. Purington and Abner R. Scranton against the schooner Harriet Ross, being the original case in which this libel of James H. Woodworth against the proceeds of the said schooner Harriet Ross was filed as an intervening claim.

Affidavit of James H. Woodworth.

STATE OF ILLINOIS, *Cook County, ss:*

I, James H. Woodworth, having first been duly sworn, depose and say that on the 16th of February, A. D. 1863, I became purchaser of the schooner Harriet Ross, at a sale by the marshal of the northern district of Illinois; that at the time of such sale I held a mortgage upon said vessel as collateral security for the payment of a large sum of money due and owing
48 to me from Nathan B. Bradley. And I further depose and say that I became purchaser of said vessel at such sale in order to perfect title

in me to said vessel and thus better protect my interests against loss. And I further depose and say that I have no knowledge of any outstanding claims or obligations existing against said vessel, and that I do not believe that any do exist excepting the mortgage claim that I control.

J. H. WOODWORTH.

Subscribed and sworn to before me this 17th day of Feb'y, A. D. 1863.
BENJ. E. GALLUP, *Notary Public.*

Endorsed: Filed Feb. 18, 1863.

WM. H. BRADLEY, *Cl'k.*

Affidavit of Charles Bradley.

STATE OF ILLINOIS, *Cook County, ss:*

Charles Bradley, having first been duly sworn, deposes and says that he is the agent of Nathan B. Bradley, who is a resident of the State of
49 Michigan; that he has been such agent since the month of June, A. D. 1858; that as such agent he has since the said month of June had the care of the schooner Harriet Ross, paying her liabilities and all claims accruing against her, except a certain mortgage upon said vessel executed by the said Nathan B. Bradley to James H. Woodworth, and a certain claim of Messrs. Purington & Scranton for the sum of seventy-two and 1-100 dollars.

And this deponent further says that the said sch'r was sold on the 16th day of Feb'y, 1863, by the marshal for the northern district of Illinois, under and by virtue of a decree made by the hon. judge of the U. S. district court for said district, in the matter of the libel filed in said court by the said Messrs. Purington & Scranton against the said schooner Harriet Ross for the amount of their said claim.

And this deponent further says that at the time of such sale of the said schooner there was, besides the said claim of Messrs. Purington & Scranton, and the said mortgage to said James H. Woodworth, only due and unpaid on account of said sch'r the sum of about seventeen dollars, which
50 sum has since been paid by this deponent as said agent.

And this deponent further says that he has no knowledge of any other claim or outstanding obligation on account of said schooner, and that he does not believe that any exist.

And this deponent further says that the said sale of the said schooner was made to James H. Woodworth, without collusion with the said libellants, or any person or persons whomsoever, but for reason that the said Nathan B. Bradley is indebted to the said Woodworth in a large amount of money.

CHAS. BRADLEY.

Subscribed and sworn to before me this 17th day of February, A. D. 1863.
BENJ. E. GALLUP, *Notary Public.*

Endorsed: Filed Feb. 18, 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twenty-second day of July, in the July
51 term of said court, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Appeal.

Now come the parties, by their respective proctors, and thereupon this cause is set down for hearing upon the record and proofs filed herein; and

the court, after hearing the arguments of the respective counsel, and not being sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on the twenty-ninth day of July, in the July term of said court, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

52 JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Appeal.

Now come the parties, by their respective proctors, and the court having fully considered and being now fully advised upon the matters herein submitted, it is considered by the court that the decree of the district court herein be affirmed and the libel dismissed at the costs of the libellant, and that the respondent have and recover of the libellant and of William K. McAllister, his stipulator, the costs and charges by him in this behalf expended, and also his costs in the court below, amounting to the sum of dollars and cents, and that execution issue therefor.

On this day, to wit, the thirtieth day of July, A. D. 1864, came the said libellant, by his proctors, and filed in said clerk's office in said entitled cause his notice of appeal, which is in the words and figures following, to wit:

53 Circuit court of the United States for the northern district of Illinois.

JAMES H. WOODWORTH, libellant,
vs.
THE PROCEEDS OF SALE OF SCHOONER HARRIET ROSS, respondent.

The above-named libellant, conceiving himself aggrieved by the final sentence or decree entered on the 29th day of July, 1864, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the case, duly authenticated, may be sent to the said Supreme Court.

BATES & TOWSLEE, *Proctors for Libellants.*

Endorsed: Filed July 30, 1864.

WM. H. BRADLEY, *Clerk.*

54 And afterwards, to wit, on the fifth day of August, A. D. 1864, came the libellant by his proctors, and filed in said clerk's office in said entitled cause his appeal, which is in the words and figures following, to wit:

JAMES H. WOODWORTH, libellant and appellant,
vs.
THE PROCEEDS OF SALE OF SCHOONER HARRIET ROSS, her tackle, apparel, &c., the Corn Exchange Inland Navigation and Fire Insurance Company, claimant and appellee.

To the honorable the Supreme Court of the United States:

The appeal of James H. Woodworth, the above-named libellant and appellant, respectfully showeth that on the 31st day of March, 1863, the above-named James H. Woodworth filed his libel in the district court of the United

States for the northern district of Illinois, against the proceeds of sale of the schooner Harriet Ross, her tackle, apparel, &c., the said proceeds then being in said district court, in a cause, civil and maritime, for the re-
55 covery of damages sustained by him the schooner Harriet Ross and her cargo, by collision with the schooner Flora Watson, on Lake Ontario, in the State of New York, to the amount of five thousand dollars or thereabouts; that process was duly issued and said proceeds detained in said district court; that thereupon the Corn Exchange Inland Navigation and Fire Insurance Company, claimants of said proceeds, filed its claim and its answer to said libel, and the said libellant replied thereto, and such proceedings were had in the said cause that on the 21st day of June, 1864, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libel be dismissed with costs. And that after such final decree, your petitioner duly appealed therefrom to the circuit court of the United States for the northern district of Illinois, and the said cause was removed thereby into the said circuit court, and there tried anew. And such proceedings were had in the said circuit court that afterwards, on the 29th day
56 of July, 1864, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed. Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, and a decree sustaining said libel, and in favor of said appellant for the damages as claimed in said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated this 4th day of August, 1864.

57 JAMES H. WOODWORTH.

Bates & Towslee, proctors and appellants; Geo. C. Bates, advocate.

Endorsed: Filed August 5th, 1864.

WM. H. BRADLEY, *Clk.*

And on the same day, to wit, the fifth day of August, A. D. 1864, came the said libellant, by his proctors, and filed in said clerk's office in said entitled cause his appeal bond, which is in the words and figures following, to wit:

Circuit court of the United States of America, northern district of Illinois.

JAMES H. WOODWORTH, libellant and appellant,
vs.
THE PROCEEDS OF SALE OF SCHOONER HARRIET ROSS, her tackle, apparel, &c., the Corn Exchange Inland Navigation and Fire Insurance Company intervening, &c., and appellee.

58 Know all men by these presents that we, Charles Bradley and Frederick E. Bradley, of Chicago, in the district of Illinois, are held and firmly bound unto the above-named the Corn Exchange Inland Navigation and Fire Insurance Company in the sum of five hundred dollars, to be

paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 5th day of August, 1864.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and
59 virtue.

CHAS. BRADLEY. [L. S.]
F. E. BRADLEY. [L. S.]

Sealed and delivered, and taken and acknowledged, this fifth day of August, 1864.

WM. H. BRADLEY, *Clk.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Charles Bradley and Frederick E. Bradley, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

F. E. BRADLEY.
CHAS. BRADLEY.

Sworn to and subscribed before me this fifth day of August, 1864.
WM. H. BRADLEY, *Clk.*

I approve the above bond and the sufficiency of the sureties thereto. August fifth, 1864.

Endorsed: Approved.

THOMAS DRUMMOND.

Filed August 5th, 1864.

WM. H. BRADLEY, *Clk.*

60 NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that the foregoing is a true and complete transcript of the record and all the proceedings had in the cause wherein James H. Woodworth is the libellant and the proceeds of the sale of the schooner Harriet Ross is the respondent, as the same appears from the records of said court now in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

61 By the Honorable Thomas Drummond, one of the judges of the circuit court of the United States for the northern district of Illinois, to the Corn Exchange Inland Navigation and Fire Insurance Company:

Whereas James H. Woodworth, claimant and libellant of the proceeds of the sale of the schooner Harriet Ross, her tackle, apparel, &c., has lately

appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of Illinois, made in favor of the said Corn Exchange Inland Navigation and Fire Insurance Company against the said James H. Woodworth, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Chicago, in the northern district of Illinois, the 6th day of August, A. D. 1864, and of the independence of the United States the eighty-eighth.

THOMAS DRUMMOND.

62 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Edwin C. Towslee, being duly sworn, do say that I served the within citation on the appellee within named by leaving with R. Rae, esq'r, the proctor of said appellee, at his office, in Chicago, Illinois, on the 11 of August, 1864, a true copy of the within citation.

EDWIN C. TOWSLEE.

Subscribed and sworn to before me this 28th day of Sept., 1864.

[SEAL.] OBADIAH JACKSON, JR., *Notary Public.*

Filed 7th December, 1864.

Supreme Court of the United States.

No. ~~208.~~ 121

JAMES H. WOODWORTH, CLAIMANT AND LIBELLANT OF THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS, HER TACKLE, &C., APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

I.

The libel on its face is not an intervening libel, but an original libel; and after reciting the cause of action and its assignment to libellant, and that a right and claim to surplus moneys has accrued, prays that the same may be decreed to libellant. No reference is made to any original proceeding, or to an adverse party claiming the fund. No evidence is offered by the libellant as to the amount in the registry, or that any disposition has already been made of it at the time of filing their libel or before decree. No claim has been filed under the rules, or no one appears who, on the face of the record, has the right to admit any of the allegations in the libel, and no proof is offered to sustain them. So that the Court was unable to say—

I. That there was surplus moneys in the registry.

II. That the facts stated in the libel were true.

III. That the libellant was entitled to anything.

II.

It does appear on the face of the libel that the lien, if any existed, was an assigned one; assigned to a party who was not owner of the property at the time of loss, who was not bailee of the same, or in any manner in possession of the same, or responsible for the safety of the property. It is the naked assignment of a law suit. It is an attempt to proceed in his own name for reparation for a wrong which was not done to him or his property, and the assertion of a privilege given to a selected class in exclusion of others. Such privileges being strictissimi *juris*, they cannot be argumentatively extended from one class of persons or things to another. Ship-owners and shippers and their underwriters may have such a lien, persons engaged in trade and commerce, but not those engaged in the trade and traffic of litigation. The latter are not to be regarded as a favored class for whose benefit the ordinary rules of law are to be surrendered. The lien is inalienable. It cannot be assigned or transferred to another person so as to give him the right of action in *rem* as assignee. (New Eagle 4, notes of case p. 427; Janet Wilson, 1 Swaby, p. 262; Louisa, 6 notes of case, p. 532.)

III.

The record also shows that the libellant was mortgagee of the Harriet Ross at the time of the collision, and was not in a position to claim any right paramount to the rights or claims of those who had a superior lien against the *res*, or against the proceeds. So that the libellant being the mortgagee cannot pay the amounts due, which are superior liens upon the vessel, in order to save it and with it his security. The lien is extinguished, and cannot be revived in the person of the payor who has accordingly no right of action in the court of admiralty in respect of his advances, and cannot set up such satisfied claim to default others having a superior lien to his own.

IV.

If it is treated as an intervening libel, then the record is imperfect, because it does not show the whole record. If the whole record is before the court, then it appears that on the 23d day of February, A. D. 1863, the Corn Exchange Inland Navigation and Fire Insurance Company of New York, filed a libel in the United States district court against the proceeds of the schooner H. Ross, for the loss of the Flora Watson (whereof libellant was the underwriter) by collision with the schooner H. Ross, alleging the loss to have occurred through the fault of those in charge of the Ross. That an answer was put in 26th day February, 1863, by N. B. Bradley, claimant, by his brother Charles Bradley. That on the first of April of the same year, Woodworth filed a libel upon an assigned claim of the Columbian Insurance Company to him for the loss of the wheat in the Flora Watson, and the loss of salt on the Harriet Ross. And on the 16th of April, 1864, one year after the first libel, another libel was filed upon an assigned claim of the Security Insurance Company, New York, for loss of the hull of the Watson. On the 12th of December, *preceding*, the court had pronounced for the claim of the Corn Exchange Insurance Company, and the cause referred to assess damages. Final judgment was not rendered until the 6th day of June, 1864, for the sum of $5,007.60. On the 21st day of June, both of the Woodworth libels were dismissed.

POINT.

Prior Petens, who, by superior diligence, obtains a judgment before other creditors, having co-ordinate or superior claims, having done so, shall be paid his debt in preference to the latter. (Saracen, 6 Moore, P. C. Rep. 73; English Admiralty, 4, same case; Clara, 1 Swaby, page 7; Dundee, 2d Hagg, 143; John Davis, 1 W. Rob., 136.

SUPREME COURT OF THE UNITED STATES.

No. 121.—December Term, 1866.

JAMES H. WOODWORTH, APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

BRIEF AND ARGUMENT FOR APPELLANT.

GEORGE B. HIBBARD, *for Appellant, Buffalo, N. Y.*

SUPREME COURT OF THE UNITED STATES.

No. 121.

JAMES H. WOODWORTH, APPELLANT,
vs.
THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

Brief and Argument on the part of the Appellant.

GEORGE B. HIBBARD, *for Appellant, Buffalo, N. Y.*

This is a cause the subject matter of which is to some extent connected with that of Nathan Bradley *vs.* The Corn Exchange Inland Navigation and Fire Insurance Company, number 120 upon the present docket. This cause must however of course be decided upon its own record.

The libel in this cause was filed April 1, 1863, and in it the libellant, the present appellant, claims to recover as the assignee of The Columbian Insurance Company as underwriter upon the schooner Harriet Ross, (fol. 10,) and upon a cargo of salt on the Ross, (fol. 9,) and a re-insurance upon the cargo of the Flora Watson, (fols. 7 and 8.) The libel alleges that losses were sustained by the negligence of the Ross, (fols. 5, 11,) which losses were paid by the Columbian Insurance Company, as follows: $3,000 as re-insurer before January 1, 1863, (fol. 8.) $1,500.97 as insurer about the last of November, 1862; and as insurer $674.95 before the filing of the libel.

The libel prays that these claims may be paid out of the proceeds in the registry of the sale of the Ross, under a decree obtained by the respondent in this case, as an underwriter upon the Watson, for damages sustained by the same collision.

The answer of the respondent admits (it will be observed that the whole eighth article of the original answer is stricken out by subsequent amendment, and a denial of the eighth article of the libel substituted in its place, (fol. 21,) most of the allegations of the libel. It simply denies that the libellant sustained the damages he alleges he sustained, (fols. 6, 14,) denies virtually allegations respecting the insurance of the cargo of the Ross, (fols. 9, 15,) demands proof of the facts respecting the loss as insurer of the Ross herself, (fols. 7, 15, 16,) and denies that the Columbian Insurance Company assigned their claims to Nyman, or that Nyman assigned to the libellant, (fols. 21, 11.)

All the other allegations of the libel are expressly admitted.

All the matters put in issue by the pleadings respecting the different insurances, the amounts and payments of the losses were proven by the libellant, (fols. 22, 29.)

The assignment of the claims to Nyman were also proven, (fols. 28, 29.) The assignment of the claims to the libellant was also proven, (fol. 31.) There is nothing in any part of the proof made in the case to contradict these things. There seems to have been some attempt to show that the assignment to Nyman was made in trust for Charles Bradley, (fol. 33.) If this were so it could not affect the present case, for there is no proof that Charles Bradley had any interest in the Ross, or anything to do with the litigation, and besides Nyman would have the right to hold the claims in trust for Charles Bradley. But there is no proof that Charles Bradley had any interest in the matter.

Nor is there anything in the evidence of Nyman, given February 12, 1864, to affect the proof above alluded to. Nyman there swears The Columbian Insurance Company gave him the claims, (fol. 39,) and how it was made, and that it was made for a good consideration to that company is shown, (fols. 32, 33,) and although he says that he did not on the 25th of March, 1863, sell his interest to any one, (fol. 39;) he states afterwards that he did not recollect it at the time, (fol. 33.) The papers executed and delivered show that the assignments were actually made, (fols. 30, 31.) Nor does the proof introduced in the Circuit Court at all affect the question. That proof consisted of the affidavits of Woodworth and Charles Bradley, made February 18th, 1863, (and before the assignments to either Nyman or Woodworth,) that they did not know, &c., of any outstanding obligations against the Ross, &c. (Fols. 48, 50.) There is no proof that they then did know of any such thing. Of course Bradley's affidavit is not evidence in the case. He should have been called as a witness. Objection was taken to this proof, (fol. 47,) and can now be taken.

Upon the record in this case alone, it stands admitted or proved, and in one way or the other substantiated, that The Columbian Insurance Company, an underwriter, before the filing of this libel, sustained and paid damages, arising from the negligence of the Harriet Ross, and that the Company, before the filing of the libel, assigned those claims to the libellant. The libellant filed this libel against the proceeds of the sale of the Ross in the Registry of the Court. Upon this state of facts the libellant claims there is nothing appearing in the record in this case, which can make at all doubtful his right to recover.

He, therefore, makes his

POINT FIRST

Upon the record, *in this case alone*, (and the Court cannot look outside this record;) there is nothing appearing, to make his right to recover at all doubtful. Upon the contrary, as appears from the foregoing statements, every fact which entitles him to have his claims paid out of the proceeds in Registry, is either expressly admitted by the pleadings, or abundantly proven.

To enable the Second Point to be presented, it will be necessary to add a statement of other facts appearing in the record, in the case of Nathan Bradley *vs.* "The Corn Exchange Inland Navigation and Fire Insurance Company," No. 120, on the present docket, (but which it is claimed cannot

be referred to in this case, and which the appellant does not desire to refer to unless this Court shall decide to consider it.)

That case arose upon a libel filed by the Corn Exchange Inland Navigation and Fire Insurance Company against *the same proceeds* upon claims of the same nature as those in this case. The libel in that case was filed Feb. 24, 1863, an interlocutory decree obtained therein December 12, 1863, and a final decree June 6, 1864. (See record in that case, fols. 12, 69, 81.) The libel in this case was filed April 1, 1863, (fol. 4,) after the libel in the case above alluded to, but *before final or even interlocutory decree in that case.*

It is understood that the decision of the Circuit Court in this case was entirely based upon the ground that the libellant in this case, *although his libel was filed before any decree was made in the other,* could not share *pro rata* in the distribution of the proceeds.

In this the Court erred and the libellant therefore makes the following

SECOND POINT.

The libellant is entitled to have his claims paid out of the proceeds in the registry, although the libel of The Corn Exchange Inland Navigation and Fire Insurance Company was first filed, as the libel was filed upon the libellant's claim, before any decree of any kind was made in the other case.

Cobb *vs.* Howard, 3 Blatchford, 524.

I. If the respondent in this case had desired to avail itself of the point upon which the Circuit Court based its decision, it should have proven the facts upon which that point arises in this case. That Court had no right to regard the proof in the other cases, and to which the libellant in this case was not even a party, as proof in this case. This case was heard upon the pleadings and proofs in it alone. (Fol. 40.)

This Court cannot look into the record in any other case here upon appeal for any purpose, and certainly cannot into the record in a case between *other parties.*

II. But it is the undoubted law that as the libel in this case was filed before a decree was obtained in any other case, the libellant should share *pro rata* with the libellants in other cases. Had the libellant delayed filing the libel in this case until after decree in the other case, as a suit in Admiralty is against all the world, and as a decree therefore must bind all the world, the result would be different. See the very able opinion of Judge Hall in the case of

The Steamboat America, 2 West. L. Monthly, 279.
The Saracen, 2 Wm. Robinson, 451, (9 English Ad. R., 451.)
The Desdamona, 1 Swabey, 158.
The Clara, 1 Swabey, 1.
The William F. Safford, 1 Vernon Lushington, 69.

GEORGE B. HIBBARD, *for Appellant.*
Buffalo, N. Y.